
# The Regulation of E-learning

## New National and International Policy Perspectives

Summary report on the proceedings of a meeting

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# *Executive Summary*

The universe of postsecondary education is expanding. It is an era of rapid demographic and labor market changes, increased competition and shifts in institutional form (e.g., the rise of for-profit degree granters, the hybrid form of nonprofit/for-profit partnerships, corporate universities), and new forms of delivery driven by emerging technologies. In nearly all of these cases, the pace of innovation and establishment of new institutional forms outstrips the ability of regulators or policy makers to stay ahead of the curve.

To better understand the complex interplay of public policy drivers regulating e-learning, the Center for Studies in Higher Education convened a meeting of experts in February 2006 for a preliminary examination of existing and emerging public policies that will shape its regulation both domestically and internationally. Three white papers were used as a point of departure for the discussions, which focused on the following areas: *The Changing Regulatory Environment: Who, What, Why, and Where?; Finance, Investment, and the Flow of Capital; Student Access and Equity; Social Costs and Benefits from an International Perspective;* and *Consumer Protection and Cross-border Education*.[2] This report summarizes our conversations and recommendations for future research. The following conclusions were drawn:

- The idea of separate regulatory regimes for nonprofit (or not-for-profit) and for-profit institutions should be questioned. In most discourse, the distinction between these entities is unclear, despite commonly held assumptions. The qualitative distinctions between e-learning and traditional learning are similarly unclear and conflicted.

- E-learning challenges many of the core values of traditional education, which necessitates developing an enhanced understanding among regulators and accreditors about the differences between e-learning and traditional learning in various types of institutions and in relation to diverse student bodies.

- An examination is needed of whether and how disaggregation and outsourcing of services in higher education can or should be regulated. Distance learning, especially e-learning, enables significant changes in the way institutions operate and how they diversify functions.

- Better coordination and communication among regulatory bodies is needed. There are too many regulatory bodies with overlapping and often competing jurisdictions and motives. Regulatory jurisdiction has become exceptionally complicated as a result, because the jurisdiction for regulating e-learning may be the location of either the student or the institution. Hybrid learning environments complicate the regulatory regime.

- Clarity should be sought to better understand the distinctions between regulations that assure quality versus regulations that create barriers for students such as access to institutions, telecommunications infrastructures, and knowledge.

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[2] These and other background materials can be found on the project website: http://cshe.berkeley.edu/research/regulation/index.htm.

- An important goal is the development of a transparent set of standards to measure education quality, regardless of the location of learning (e.g., e-learning vs. traditional classroom) or institutional type. Arriving at a consensus about what those standards should be is a daunting prospect.

- Comparative and robust data ought to be collected and shared so that institutional operations and student performance are clear and transparent to both regulatory bodies and consumers/students globally.

- Methods need to be established for educating and informing regulatory bodies. For example, the regional accrediting community in the U.S. does not yet fully understand the fundamental differences between public financing and private financing.

- Learner needs should be addressed. Until we know what learners are seeking, efforts to address issues related to establishing a regulatory framework may not be meaningful or easily accomplished.

# *Introduction/Background*

The universe of postsecondary education is expanding. It is an era of rapid demographic and labor market changes, increased competition, shifts in institutional form (e.g., the rise of for-profit degree granters, the hybrid form of nonprofit/for-profit partnerships, corporate universities), and new forms of delivery driven by emerging technologies. In nearly all of these cases, the pace of innovation and establishment of new institutional forms outstrips the ability of regulators or policy makers to stay ahead of the curve.

As online education increasingly challenges the traditional importance of institutional locale and political boundaries, it has run into the considerable complexities and policy collisions of state and national regulation and multiple levels of accreditation within the United States. While there is a fair amount of *ad hoc* policy at the state and institutional levels, at the national level, the traditional "Big 6" nonprofit associations find themselves challenged to compete with for-profit associations and corporations in the legislative arena. On the international level, significant attention is being paid by UNESCO, OECD, and others to the role of e-learning in cross-border education and its implications for national quality assurance and accreditation. Further complicating the picture is the increasing momentum of the "open education content" movement, and the questions it raises regarding how proprietary and open content will be blended and adapted into local contexts of certification and degree granting.[3]

In February 2006, the Center for Studies in Higher Education (CSHE) at the University of California (UC), Berkeley, with the support of the Ford Foundation and the Andrew W. Mellon Foundation, convened 21 experts at WCET in Boulder, Colorado, to explore and inform current and ongoing debates in the regulation of technology-mediated higher education both domestically and globally. The participants represented a variety of perspectives in higher education, regulation, and e-learning.[4] Our discussions focused on a preliminary examination of existing and emerging public policies. Our goal was not to develop another inventory of regulatory barriers; we were seeking the "why" of regulation rather than the "what." Specifically, what are the public policy issues that *drive* regulation, with particular emphasis on the imperatives—both real and imagined—that underlie domestic and international regulation of postsecondary education, from both an institutional and a consumer (learner) perspective?

The format of the meeting was relatively informal and flexible to maximize conversation. Prior to the meeting, three white papers outlining key issues were circulated.[5] These papers provided a point of departure and their main points are not repeated in this summary. We summarize here the main areas of discussion as reflected in our notes and derived from audio-recorded transcripts. It is not meant to be a verbatim record, as the discussions were too lively and wide-ranging for that. Five broad and overlapping topics were covered:

- The Changing Regulatory Environment—Who, What, Why, and Where?
- Finance, Investment, and Capital
- Student Demand, Access, and Equity
- Social Costs and Benefits: Cross-Border Education and the International Context
- Consumer Protection in Cross-Border E-learning

[3] John Daniel *et al.*, "A Tectonic Shift in Global Higher Education," *Change*, Vol. 38, No. 4 (July/August 2006), available online: http://www.carnegiefoundation.org/change/sub.asp?key=97&subkey=1841.
[4] Details about the meeting are available online: http://cshe.berkeley.edu/research/regulation/index.htm.
[5] Richard Garrett, Gary Matkin, and Vijay Kumar, "The Changing Structures of Higher Education;" Michael B. Goldstein, "Regulation, E-learning, and Finance;" and Sally Johnstone and Kurt Larsen, "Consumer Protection in Cross-Border E-learning Delivery," available online: http://cshe.berkeley.edu/research/regulation/reading.htm.

# *The Changing Regulatory Environment: What, Who, Why, and Where*

Systems of higher education—whether state, national, or regional—have experienced significant change, and the regulatory environment is and will be affected by these changes. A thoughtful discussion of changing higher education structures and associated regulatory drivers is presented in the white paper, *Changing Structures of Higher Education*.[6] In that paper, Garrett *et al.* note that the regulatory framework impacting e-learning can be viewed as a complex of attempts to balance the promotion of perceived benefits of the new technology with the protection of established forms, provisions, and institutional norms. Regulation is generally driven by public policy goals; in e-learning, as in other fields, these goals frequently collide. For example:

| | VS. | |
|---|---|---|
| 1. | The encouragement of innovation, change, and competition in higher education. | 2. The desire to control quality, with quality defined with reference to traditional notions of higher education (raising barriers to entry). |
| 3. | The desire to diversify capital investment in higher education. | 4. The desire to protect existing institutions and avoid "commercialization." |
| 5. | The establishment of an enabling infrastructure (technological, legal, policy, financial) for new forms of education. | 6. Unwillingness to divert limited resources from already resource-poor mainstream higher education provision. |
| 7. | The promotion of institutional autonomy, diversity, and competition. | 8. The preservation of centralized control, coordination, and planning. |
| 9. | The desire to rationalize higher education to achieve tighter focus and greater efficiency. | 10. The desire to maintain traditional notions of scope, scale, and content. |

The regulatory responses to these colliding goals will have a profound effect on learning in the future. Of course, there are many interrelationships among public policy drivers not indicated in the above display, but this presentation provided a framework for the discussion that followed.

At the outset, we spent a significant amount of time exploring issues of vocabulary and meaning presented in this and other white papers. The areas identified as most in need of clarification and agreement were: 1) What do we mean by regulation? And does it differ from accreditation?; 2) How is e-learning defined and what drives perceptions of its quality relative to traditional modes of learning?; 3) How do we untangle issues around who and what is regulated, and where and why regulation occurs?; and 4) What are the best ways of clarifying distinctions between nonprofit and for-profit, private and public? These initial points of discussion are summarized below.

[6] Ibid.

## WHAT DO WE MEAN BY "REGULATION?"

Although regulation often implies restriction, much regulation in the public sphere is frequently for the public good (e.g., health regulation), and can, in fact, enable or foster innovation. Helen Nissenbaum discussed various levels of regulation relative to education as a public good. The average citizen expects there to be mechanisms set in place, namely the "right people or agencies with the right qualifications" to act as gatekeepers. The question then is: what mechanisms should be put in place to enable outcomes (that are as positive as possible) so that the public interest—however this is defined—can be served?

Six modes of regulation were suggested. These different modes are not alternatives. Each mode serves different functions and has different effects. By teasing apart the different modes of regulation, we might better understand the results each one is going to produce in different contexts, whether in the U.S. environment, in cross-border contexts, or within national and regional boundaries. Each mode can contribute to the public interest in its own way and all of them, or some combination, are necessary depending on context.

1. Government regulation may be necessary for certain kinds of outcomes (e.g., the role of the U.S. Federal Trade Commission). We already have some regulation in place at the government level, but are additional or different regulations needed?
2. Independent accreditation can be a third-party mechanism that has a set of principles or standards that are applied to certain arenas and provide a "stamp" of approval (not unlike the Good Housekeeping seal of approval).
3. Funding mechanisms such as access to private or public capital, or telecommunications infrastructure, serves as a form of regulation that essentially determines who is in, and therefore who succeeds in, the market.
4. International guidelines or principles, such as those developed by OECD/UNESCO, are not regulation *per se* but provide a set of guiding principles or soft laws.
5. Industry benchmarks can serve as ideals to which entities can strive. Assessing examples of best practice and analyzing exemplars can provide guidance about what works and why.
6. Professionalism, whereby the people who create e-learning, or the organizations that are in the business of providing it, come together as a community and set standards for a high-quality product or experience, thus providing a mode of self-regulation. This is what happens in traditional higher education where faculty set standards, or in organizations such as the American Medical Association that require members to subscribe to their principles and ideals.

Though no single definition of regulation was agreed upon during our meetings, various opinions emerged. Regulation was described as an edict that limits the free market, sometimes in efficiency-enhancing ways, sometimes in ways that are adverse to efficiency. In the context of e-learning, regulation can refer to internal and/or external forces of constraint that deal with systems, institutions, faculty, students, and so forth. Constraint can have a positive affect on a new area of development, but it can also hinder innovation. It was agreed that regulation cannot be treated as a binary issue. Higher education is reorganizing itself globally in a number of ways, and that reorganization will involve some external regulation and self-regulation in varying combinations.

**Regulation vs. accreditation**. As a further refinement of terminology, it was noted that there should be distinctions made between accreditation and regulation. First, accreditation is a U.S. phenomenon and it is often viewed as a very large and complex public-private system of federal, state, and private regulators. Judith Eaton and others argued that accreditation goes beyond regulation to address specific issues of quality. While accreditation is, by some accounts,

regulatory, accreditation is about certain core academic values that can be expressed in a variety of ways. Accreditation addresses issues around institutional autonomy, carried out in a responsible manner, and issues around the role of faculty and academic freedom. Ralph Wolff pointed out that accreditors in the U.S. need to meet a whole set of expectations from various entities, including the concerns of Congress and the Department of Education. The claim that accreditation is not a form of regulation was countered, however. Every institution that is accredited views the accreditor as exercising regulatory authority. "If you say, 'You may live or you may die,' that's probably a regulatory activity." International participants pointed out that non-U.S. countries do not have accreditation at all, at least not defined as quality assurance or quality improvement, and the term "accreditation" is often not welcome internationally.

## WHAT IS E-LEARNING, AND HOW DOES IT RELATE TO CONCEPTS OF QUALITY AND PRESTIGE?

Finding a common definition of e-learning—what it is and what it is not—can be a vexing problem in conversations about its regulation. Distributive (distance) learning in general encompasses a wide array of methods and has a long pre-Internet history. For our conversation, e-learning was defined as education that is provided *in substantial part* through the use of the Internet, or any other technology *du jour.* Many e-learning programs are not pure e-learning. We currently have pure Internet-based e-learning and hybrid models, (i.e., where there is both Internet-based instruction and face-to-face interactions among facilitators and students). The ratio between these two types of e-learning present in any one institution can vary significantly.

The basic distinction between e-learning and the traditional academic model creates complications when discussing quality. With e-learning, as one participant pointed out, there is the persistent notion that "different equals not good." This has generated a very one-sided approach, a wholly external evaluation of quality. The "extreme rationality, an extreme quantitative approach" to evaluating e-learning may be the result of uncertainty about exactly what is driving quality within e-learning. Campus-based teaching has historically depended upon autonomous faculty expertise, whereas with e-learning—at least in some courseware models (described more fully in the Finance section below)—the curriculum is developed by some person or a group of people, and has some level of standardization. This creates perhaps a false dichotomy between the individual (faculty) creation of instruction in the traditional models and a more corporate (or other entity) creation of instruction; the former is often presumed to be of high quality and the latter of lower quality, with virtually no data to support that presumption. And how do those perceptions of relative quality relate to questions of institutional prestige? Bill Durden asked further, "what makes prestige in educational institutions, be they e-learning or non-e-learning?"

> Much more work has to be done in what makes for prestige in the 21st century in educational institutions because the public doesn't know what to do, others don't know what to do, colleagues in my sector don't know what to do with this question of prestige... Is it worthwhile for e-learning to be debated *on top* of the matrix of traditional learning? There is too much of an attempt to compare the two sectors and work from the two sectors, when we really ought to pause, and really bite the bullet and talk about totally new configurations of higher education.

## DISAGGREGATING THE WHO, WHAT, WHY, AND WHERE OF REGULATION

E-learning raises complex and intertwined questions around *what* and *who* is being regulated, *why* they are being regulated, and *where* regulation occurs. These tightly entangled issues were explored in a wide ranging discussion led by Michael Goldstein.

**What is being regulated?** Higher education generally refers to institutions that provide credentials, but when e-learning is included in that equation, the definition becomes less clear. Regulation has many forms, whether the regulation occurs at the institutional level (as credentialer), the level of the content provider (who may not be the same as the institution), or the level of use via professional licensure. The "provider" of instruction may be separate from the institution that credentials learning. The provider of "courseware" (loosely defined) may be an altogether different entity. The multiplicity of services and roles within the educational framework begs the question: exactly who controls what? Does regulation control the entity, meaning where the education originates (e.g., location)? Does it control access to the learner (e.g., in cases where the distribution of learning moves from the jurisdiction of the provider to the jurisdiction of learner)? Does it control technology?

Often the institution granting the credential is being regulated but, in cases where the credentialing institution is different than the institution creating the content, there can be ambiguity about who is being regulated. There are substantial numbers of professional licensing agencies that will not recognize a credential granted by an otherwise academically legitimate institution; one can get a degree from an authorized institution, and the content is acceptable, but the credential cannot be used. Moreover, what happens when students take institution-free e-learning, then are credentialed by (and funded through) entities that do not deliver the actual curriculum but simply test that student learning has occurred? Why does a student need a traditional institution if a credentialing body can provide the desired end result: the degree?

**Who is being protected by regulation, and why?** One way to understand regulation is to examine *who* specific regulations are attempting to protect (e.g., institutions, faculty, students, etc.). The most frequent answer is students. Indeed, there exists a concern that, left unchecked, there would be the development of for-profit charlatans who rip-off innocent consumers, perhaps especially in the developing world. If quality is in fact being regulated for the sake of students, how do you "assure" quality? Quality in higher education in general has historically depended upon determinants such as prestige and qualitative internal regulatory processes driven by faculties in which many institutions take great pride. Such difficult-to-quantify processes often drive public perceptions of relative quality when comparing traditional and electronic modes of learning.

It is essential to distinguish between the regulation of quality and regulation that prevents or enables the achievement of other goals. The question of "why regulate?" follows from the question, "who are we protecting?" Are we protecting the learner? Are we trying to protect the institutions in a jurisdiction against the degradations of those outside of these jurisdictions? Testing was raised as an example where a body such as ACT could easily authenticate that a student was who he or she claimed to be, but some states have created hurdles to such a solution. For example, the Dow, Lohnes & Albertson report found that approximately 70-80% of all states believed that they had a regulatory responsibility to supervise examinations that occurred within their jurisdiction.[7]

One can ask if culture and/or politics are being regulated. Few would suggest that China is using regulation of Internet access to specific content because they are interested in protecting the learner. Access to the learner does not have to be controlled if the learner is prevented from getting access to the institution. Inhibiting access can also be through prohibitive costs of technology and networking (the current policy discussions about "network neutrality" being a

[7] Dow, Lohnes, and Albertson, "2005 Postsecondary Education Physical Presence Survey: Summary of Initial Responses," December 2005, available online: http://cshe.berkeley.edu/research/regulation/documents/dla_interim_presence_report.pdf.

looming example), or it can be through other mechanisms that do not recognize certain certificates and/or providers simply because they employ e-learning.

## WHO REGULATES WHERE? REGULATORY JURISDICTION

"Who should regulate?" is a difficult question to answer because of the competition and confusing overlap among regulating bodies. What triggers the regulatory regime? Who are the players and who has regulatory jurisdiction? In the past, an educational institution had a physical location, and its local, state, or regional jurisdiction was evident. The question for students in traditional higher education was whether they could attend institutions within or outside of their jurisdiction. As jurisdiction becomes less and less clear, however, the "where" issue is not only about location but about "type" of institution or program as well. The type of student is also a policy issue—whether students are full-time or part-time, citizens or residents.

We have currently a complex environment in which multiple regulators have the opportunity to regulate the same institution. In the e-learning environment, the situation is confused further because there are two regulatory foci: the location of the school and the location of the student. Theoretically, one or both can be regulated. "Who has the right to regulate, or what multiples have the right to regulate?" This issue will become more and more significant, particularly as hybrid learning environments become more prevalent and the number of students attending multiple institutions increases. The inclusion of the international cross-border marketplace further confounds the situation. In the U.S. environment, some states engage in what could be questionable regulatory practices. A state, or any government, can decide to control a certain activity, but there must be some legal framework within which to exercise that control. *Can* one, versus *should* one, have jurisdiction? We need to look at that distinction: whether a government legally can versus whether a government legally should exercise that jurisdiction.

## DIVERSITY OF PROVIDERS: FOR-PROFIT VS. NONPROFIT

The U.S. has a fairly unique higher education system in the world in that it is market-driven and there is a vibrant mix of public and private institutions. Students have direct access to financing through student aid, which, theoretically at least, levels the playing field. In practice, however, the for-profit schools have "certain fiery hoops they have to jump through, which the nonprofit schools do not." Regulation by virtue of access to funds can shift market dynamics by opening up a certain market to certain types of institutions.[8]

If the world would be well-served by competition between for-profit and nonprofit, what are the regulatory regimes that support that competition or maintain an ideal balance? Marty Michaelson provided a historical perspective:

> I think many lawyers would say that the most significant court decision ever in American higher education was the Dartmouth College case in 1819. And you remember that was the case in which then Chief Justice Marshall upheld, in essence, the authority of private college trustees against the authority of the state legislature. The Chief Justice had an important subtext: he wanted to discourage state governments from controlling private colleges and universities. And the reason he wanted to do that was he wanted to encourage a competitive environment between public and non-public higher education. And it was a brilliant success because, as we know, abetted by the Morrill Act and other healthy

[8] It was pointed out that, until the past year, the regulatory scheme of the United States has been highly protective of nonprofit higher education.

> developments, that's exactly what we got, a very vibrant competition between public and independent higher education. What we're seeing, I think, in the for-profit world—and one of the reasons I think having a discussion about regulation of e-learning is so laden and difficult—is the emergence of an equally vibrant competition between for-profit and nonprofit higher education...in the end, I think, [competition will be] conducive to innovation and the improvement of education generally.

Public perceptions of quality are often tied to the perceived differences among institution types and delivery modes. Institutions can be defined—and divided—by several characteristics: for-profit and nonprofit; degree and non-degree; but also between undergraduate/graduate and career/technical, and so on. For each of these pairs, there are overlapping regulatory regimes. The questions then become: should there be separate regulatory regimes simply because one organization is different from another? Should there be a different regulatory regime depending on whether the institution is degree-granting or non-degree granting, for-profit or nonprofit, or whether the institution provides an undergraduate or graduate program, or career training? Mike Offerman and Paula Peinovich emphasized that there is significant confusion that arises in discussions about regulation relative to comparisons of nonprofit vs. for-profit, private vs. public, and the role of traditional learning vs. e-learning in such institutions. The for-profit sector is not monolithic. For-profit institutions have widely different sets of admissions requirements and widely different quality assurance processes, as do institutions in the nonprofit sector (privates, publics, etc.).

# *Finance, Investment, and Capital*

The fundamental financial difference between e-learning and traditional higher education, which is highly capital-intensive, is the timing of funding. In traditional higher education, the necessary up-front capital investments are in physical campus locations. Other funds follow a "just-in-time" model of distribution in that students pay in advance for courses and faculty are paid from student funds (and other sources). With e-learning, however, particularly in models that use highly crafted courseware,[9] there is a significant up-front investment in the creation of intellectual property prior to the collection of student fees.

As outlined in Michael Goldstein's white paper, *Regulation, E-learning, and Finance*,[10] the U.S. system of financing higher education is a hybrid system in which money goes to both students via federal financial aid and to institutions through state support. Typically, support is based on jurisdiction but e-learning raises new questions about which institutions will qualify for support and where students can be engaged in learning. Again, it is imperative to carefully differentiate among for-profit, nonprofit, e-learning, distance, and traditional education, and among purely distance learning institutions and dual mode institutions (i.e., where regular programs are offered on campus plus a proportion of courses is offered at a distance, often via e-learning).

## DISAGGREGATION AND OUTSOURCING

Disaggregation and outsourcing can result in regulators sometimes being confused as to who the real party of interest is, who they can investigate, and who has to make the representations. Even the persons involved in the transactions are sometimes confused. What e-learning has created is an ability to disaggregate services that is fundamentally different from traditional education, because structures may technically lie outside of the existing regulatory scheme.

Outsourcing can occur at several levels. The curriculum can be created by a third party and then adopted and ordained by the institution. The evaluation can be done by the institution or can be done by a third party under contract to create and administer an examination protocol that the institution then adopts. The institution can be "bifurcated into the traditional institution, licensed, accredited, nonprofit, public, and another entity that can be capitalized and be for-profit." And the important question is: where should regulation be focused? With regulation broadly defined and encompassing quality assurance, should there be a regulatory regime that is set outside of the institution but that deals with the creation of content, or will the marketplace take care of it? What role do competency-based credentialers, such as Western Governors University (WGU), play?

The accrediting framework traditionally has been based on a faculty-centric model and the existing standards-based frameworks are still very much input-based and asset-based. While many accreditors believe that existing standards can accommodate e-learning, those experienced working with e-learning initiatives suggest that adjustments may, in fact, be needed to deal with the disaggregation and outsourcing of learning services.

## SCALABILITY

In undergraduate education, many of the same technologies employed in e-learning have benefited the traditional campus as well. Whereas previously the physical plant might limit the scale owing to the number of large classrooms, teaching staff, and other variables, this is

[9] The U.K. Open University model is another example.
[10] Available online: http://cshe.berkeley.edu/research/regulation/reading.htm.

beginning to change. In some cases, particularly those courses that are re-engineered appropriately and newer technologies are enabled to engage effective e-learning, more students can be accommodated and quality can be maintained or increased. Achieving economies of scale, however, requires volume for the economics to work. One regulatory consequence is a greater oversight of the level of service provided to students by virtue of the scale.[11] Is, or should, scalability be a differentiating regulatory issue between e-learning and traditional instruction?

The expansion of e-learning can create residual problems for traditional institutions, many of which may embark on e-learning ventures without a clear understanding of the needs and requirements of the technologies. These institutions may believe that e-learning is scalable, but they do not have the necessary infrastructures. There are significant workload demands to be responsive to students, and many institutions are not as effectively prepared for this scaling up as they originally thought they were. Where demands on faculty time are already significant, there indeed may be resistance to scaling up. As a result, institutions move to hiring adjunct faculty or establishing relationships with other institutions for programming or content. The cost of marketing is another example of the significant unanticipated costs associated with entering the e-learning business.

## COURSEWARE AND OPEN EDUCATIONAL RESOURCES (OER)

The point of emphasis in regulation of e-learning is currently on the adopter of curriculum and not the developer of such, which begs the question: should the regulatory environment shift the focus? Foundations, and increasingly governments, continue to support open educational resource repositories, although public support for such activity is more common in the international arena than it is in the United States:

> Internationally, we are seeing investments, public investments, all over the globe in the development of open content repositories of different kinds. There is this burgeoning set of activities, but there is no regulatory environment pertaining to it.

As repositories grow, less capital may be needed for courseware development generally, and the entire financial dynamic may shift.[12] Given that scenario, the question was raised: if government is going to support the availability of open access courseware, to what extent is government going to be, or should be, involved in quality assurance respecting that courseware? Such a regulatory regime might be completely independent of institutional regulation. It is also possible that, despite public funding, public authority may cede to private or self-governing groups.

> So for your own institution, you would have to do this informal collegial policing of the quality of content in repositories. It is for your own practical benefit because you don't want to force your instructors to go through all the effort of trying to figure out what's good and what isn't. But it's trickle down. The regulations are at the institutional level, they're not on the individual courses in that repository.

Such a screening process could evolve in any number of ways including the ascension of branded material, which is a form of "trickle down" regulation. The likelihood that there will be some kind of gatekeeper or qualitative test somewhere is strong because doing so will be needed to raise the quality of the whole enterprise.

[11] One can argue that 40,000-student public universities run into the same kind of problems.
[12] It was suggested that the capital value of courseware will decrease because the market is becoming saturated. While that results in a low financial value, there may be a high social value to such courseware.

Regulatory efforts that have attempted to examine course materials at more specific levels (such as frameworks) have often failed, and one participant provided Mexico as an example. Just as governments do not regulate textbooks at the higher education level, it is not likely that there will be regulation at the specific level of courseware.

> There is a very long history in the United States of skepticism toward content regulation, intellectual content regulation, and I think that it's a pretty strong argument against having regulation here, except where there's privity between the user and the provider, which is the traditional way that it's been regulated...If you have government in the business of saying "that's a good course and that's not a good course" or "that's a good book and that's not a good book," that's the kind of thing that government has been kicked around for doing in the past.

Diane Harley pointed out the importance of clarifying what we mean by courseware repositories and open content: "Is that something that an individual just throws up on the Web or is it something that is branded by MIT or UC as a full course or program? Is it a digital collection from a library or museum or someone's blog?" If we include everything freely available and created by anyone, then the conversation becomes more complicated.

> It is important to note the activity around the social software movement, social computing movement, very much related to the Wikipedia and Web 2.0 model. And it goes to the question of who are the regulators of this content? There is a movement where many in the Silicon Valley and related industries think that information ultimately will be out there on the web and any websurfers, not institutions or faculty, will be the gatekeepers of what is of high quality and what is not of high quality by voting, tagging, or actually revising the content. Whether or not those models work will, of course, depend on toppling the strong traditional role and value of peer review in the academy, among other factors.

Such a distributed process of quality control would create regulatory tensions because it would be fundamentally antithetical to traditional concepts of higher education's purpose, in which credentials depend upon some process of assurance indicating that what has been achieved has met certain minimum standards. Another participant pointed out, however, that once a credential is in the equation, then so is regulation, since the burden of proof of quality rests with the institution offering the credential. Thus, the adopter—not the host—of any open content becomes the filter through which that content is regulated.

> If there is a host of open content, and the University of Mauritius wants to adopt that content, it is the University of Mauritius that's going to be the gatekeeper for what fits in this framework, what the curriculum looks like, and what the criteria for issuing the credential are.

In addition to the open courseware model, there is the model where an entity outside of a higher education institution could create the best possible courseware library and offer it for a fee. One issue that arose was the likely outcome of such market-driven models. As one participant surmised, "if I were going to create an e-learning business, then I would do the calculus. I would do all the courses that lots and lots of people want, because then I could make more money on scale." But following such a purely market-driven model has larger repercussions, such as the lack of diversity of knowledge (and possibly the concomitant lack of use), and a drive towards courses that are mass produced and not customizable to local contexts. Another participant expressed concern: "There are inherent or structural reasons where market base is going to yield certain kinds of outcomes, high quality but not diversity; you're not going to serve certain kinds of knowledge needs

that society has." The "long tail"[13] argument was cited by Gary Matkin as a counter to this idea. There is still the possibility of making money and serving niche needs.

> There may be a great deal of profit to be made and people are beginning to see it in what's called the "long tail." The lower end is more spread out, but with e-learning—because you're more efficient at reaching many more people in many more places in this long tail—you can aggregate students in a critical mass that makes it economically feasible to serve them with niche products. So there is an argument on both sides.

## QUALITY VS. FINANCIAL RETURN

Different perspectives were expressed on the issue of balancing the bottom line with quality in e-learning. Some participants suggested that for-profit entities face the inevitable need to cut corners or play to shareholders in a competitive market—which might affect quality negatively. Others argued that public institutions may actually be held to a lower quality standard and therefore are often shielded from worries about cost effectiveness. E-learning programs vary greatly in quality and there is no clear correlation between quality and the prestige of the provider, nor its for-profit or nonprofit nature, and syllabi do not automatically transfer over into the e-learning context.

> The underlying assumption that content, or content knowledge, or even open source of content and the ability to access it, equates to the ability to build a high-quality online course are wildly different assumptions, because a course is so much more. A course is not just the purveyance of systems. It's the instructional design, it's the engagement of the learner, it's the dialogue, it's the effect, it's socialization—all kinds of things—the formation of advanced critical thinking skills. The assumption that "this content is from MITOCW, therefore, it is high-quality and therefore if you use it, your work will be high quality," should be challenged.

## PUBLIC VS. PRIVATE INVESTMENT

Regarding private investment, "a critical prerequisite is regulatory certainty." A regulatory environment in which consequences are unknown—for instance, whether or not the institution will be allowed to operate and under what circumstances—will dramatically curtail investment. The involvement of international agencies in the financing of higher education may be important given that they encourage both investment and donor strategies. The International Finance Corporation, which has a set of programs to encourage private investment in education, is an example of a hybrid of public and private support. Such international intervention will be particularly necessary in developing countries as it may provide a foundation for other non-governmental funds to be drawn into the post-secondary sector and, ultimately, into e-learning.

Another way to approach the issue of finance is by considering not the utilization of capital but rather access to capital. For example, there is little capital available in the public sector for traditional institutions to engage in e-learning. Many nonprofit institutions create new entities within their organizational system to deliver e-learning programs. In light of past failures, many of these are run like businesses and sheltered from the main institutional structure. It was also noted that the lack of capital in the public sector has resulted in leaders who have an eye towards innovation migrating from nonprofit to for-profit institutions.

[13] Chris Anderson, "The Long Tail," *Wired*, Issue 12.10 (October 2004), available online: http://www.wired.com/wired/archive/12.10/tail.html; Saul Fisher, "Long Tails in Higher Education," *Inside Higher Education*, May 2005, available online: http://insidehighered.com/layout/set/print/views/2005/05/27/fisher.

In the global marketplace, there is an underlying sense of risk, especially in terms of reputation and prestige, which has resulted in cautious undertakings. The result is that many "prestigious" institutions have been very selective of markets that they have entered and the programming that they have made available. As e-learning grows, however, more well-known institutions will likely enter the e-learning marketplace, lending prestige to e-learning in general.

It was suggested that financing could be explored from an additional lens: the total amount society spends on higher education. Better understanding this dynamic—the actual flow of capital—might help shed light not only on distribution, but on potential shifts in capital distribution over time. For example, now that regulatory limits on the growth of online learning programs have been lifted, it is likely to spur investment in new forms and in private support as well. Quantifying those capital flows from year to year could provide a new window from which to address the role of finance in regulatory issues.

Concern was expressed that the regional accrediting community in the U.S. does not yet fully understand the fundamental differences between public financing and private financing. These differences are compounded by the difference in financing between for-profit and nonprofit institutions, and by the fact that many of the private sector operations are constrained by SEC regulation, public disclosure, shareholder liability, and so on, which are outside the accreditor's tradition. It was suggested that these constraints may actually impose stronger transparency requirements for publicly traded companies.

# *Student Demand, Access, and Equity*

E-learning has been fueled globally to a great degree by what Bruce Chaloux referred to as an "insatiable demand," especially for lifelong learning.[14] E-learning ideally enables greater access to both learning and resources—ultimately a credential—in a much more learner-oriented way than in the past. This consumer-friendly model and the prospect of "just-in-time" learning are drivers that can facilitate access. In part, our ability to engage in digital discourse has become an extension of how we as individuals operate our own lives, whether that is how we bank, how we communicate, or how we use our Blackberrys at meetings. "Technology is much more available now than it was five years ago or ten years ago and we can assume it will be much better five or ten years from now."

Convenience and portability are two outcomes of e-learning. Over the past five or so years, e-learning has been improving in overall quality, in better technology delivery mechanisms, and in creating authentic communities of learners. These changes have supported and encouraged some form of e-learning in many, if not most, institutions. Students have driven this change, both in terms of student-student and student-faculty interactions. Equity is a major concern where cultural differences and cost are issues, however. There is still a digital divide in the U.S. and internationally. Despite telecommunications advances in some areas, accessibility and the availability of technology are still very limited, especially in the rural south of the U.S., and large swaths of Africa, Asia, and Latin America. Though the efforts of the World Bank and others who are helping to underwrite activities in developing countries are laudable, it is important not to lose sight of the tuition affordability challenge in the U.S. and its effect on access and equity. Mark Luker noted the additional emerging threat to access posed by possible changes in telecommunications policy and Internet governance:

> Although those issues are seemingly unrelated, they will be important for e-learning in the future. We cannot assume that the Internet will evolve to a cheaper, faster, better version of what it is today...[Some in the entertainment industry] are proposing to change the way Internet access is charged—charging not just the consumer but the content provider, possibly auctioning the best service to the highest-paying content provider. This kind of approach could fundamentally alter the way higher education could use the Internet. We might be required to bid against the entertainment industry, for example, to get good channels for our distance learning video streams. We could be bidding against each other to have our signal delivered with better quality than commercial signals, and this kind of thing, even between our own higher [education] institutions. It seems farfetched, but it's right in the public discussion today. The issue is network neutrality.

## THE E-LEARNING MARKETPLACE

There is no doubt that a global market for both students and providers is expanding rapidly[15] and that some providers are engaging in e-learning because they perceive a great market potential. Students have a veritable grocery store of learning opportunities, and while they may not yet be able to select and package these courses into coherent programming that leads to some kind of a credential or a degree, the possibility is on the horizon. More and more, the student can tell the provider what he or she wants and needs, where he or she wants to get it, and when he or she wants to attract or pursue some kind of certificate or degree recognition.

[14] Chaloux's presentation is online at: http://cshe.berkeley.edu/research/regulation/reading.htm.
[15] See, for example, The Sloan Consortium website, http://www.sloan-c.org/publications/survey/index.asp; also Eduventures, "Traditional Universities' Continuing and Professional Education Units Position to Win in the Online Education Market," news release, 29 August 2006, available online: http://www.eduventures.com/about/press_room/08_29_06.cfm?pubnav=about.

The jury is out on how institutions want to price their e-learning activities. We are seeing both those who discount it and those who increase it. A significant trend is likely going to be to price to the market. It was suggested that assessing the value of e-learning, and its relative affordability and access, should be viewed within the larger context of the total cost of education. Textbooks, for example, are expensive, and are often more than the cost of tuition for some schools such as community colleges. Other factors include the cost of transportation to and from class, the time and effort of going back and forth to the library, housing, and so on. In other words, "the whole economic exchange" needs to be entered into any affordability calculus.

In the past five years, there has been a decline in international student enrollments in on-campus U.S. graduate programs and, as a result, many programs are reaching out to international students through e-learning. Clearly questions are raised regarding the regulation of this global marketplace:

> This question about how we regulate in that marketplace, and how the U.S. higher education establishment starts to look at itself as a commodity, is intriguing. It seems fairly easy to operate outside the boundaries of the United States. In fact, it's probably easier to operate a U.S. institution outside the U.S. than it is for the Canadian institution, Athabasca, to come into the U.S. The U.S. higher education establishment has not taken advantage of that. The question about whether we should is still up for debate.

One concern is that demand is so strong that e-learning programs are being rapidly developed to such a degree that there is little time or ability to regulate them. And regulation after-the-fact is particularly difficult, especially if market-driven regulation takes care of itself. The confusion is compounded by the foggy lines of regulatory authority; one of the biggest challenges is navigating the myriad web of regulatory bodies. Serving distance markets presents local—and political—challenges, especially when dealing internally with the institution. Then there are additional issues relating to state and national politics.

> There are quality control mechanisms, by whatever name we call them, both governmental/state/national and voluntary, but connecting these dots is a pretty difficult thing. Some of them are incompatible and we can see that even in regional accreditation in the U.S. We, as a broader community, need to find ways to build these bridges, to make even the unevenness, to create greater compatibility among markets.

Unclear lines of regulatory authority are an issue even among and between U.S. states, and there is still conflict in some states as to who does what and how to do it, including the appropriate role for accreditation. Regulation is often labeled as consumer protection but, in reality, it is very often about jurisdiction. Some states have very difficult hurdles for new institutions to operate (New York and Oregon were both identified as particularly notorious). There are also some states in which it is fairly easy to start new learning operations, which can be equally problematic.

Chaloux discussed the Sloan-C project[16] in reaction to Hurricanes Katrina and Rita, in which institutions from 38 states participated to take in students and, in most cases, waived tuition fees. As a result of the Sloan project, students were essentially encouraged to take multiple courses from multiple institutions at the same time with little administrative effort, and the process worked well for the most part. No regulatory questions emerged during this project, which raises the potential for examining this case study to determine what could be learned and applied to the higher education landscape as a whole.

[16] The Sloan-Consortium, online: http://www.sloan-c.org/.

## CREDIT TRANSFER AND DEGREE COMPLETION

Student mobility and credit transfer are issues that have taken on significant life at the state level in the U.S. because too many sons and daughters of influential parents are running into problems trying to transfer credits between local schools. There are financial implications to transfer problems, especially with regard to time-to-degree, for both the student and institutions. States are making large investments in higher education of whatever sort, yet there is a high rate of students who are not progressing over a six-year period of time towards a degree.[17] This issue is likely to get some additional traction, simply because the states are starting to look at it as an investment issue. Mode of delivery is a stumbling block for many institutions. Some liberal arts colleges have guidelines that restrict the number of online courses that students may take for credit. These limitations are based on arguments of prestige, though such restrictions can inhibit student access, mobility, and degree completion in the long run.

Degree completion is a problem that e-learning has the potential to address. The Southern Regional Educational Board (SREB) states, in particular, are being encouraged to identify or develop degree completer institutions. Such institutions could absorb students who have accumulated credits but are unsure of how to finish their degrees. SREB has spent a lot of time with students who are bringing these issues to the table. They are currently building a model that will capture student records through e-portfolios along with a "crosswalk" that will identify institutions that are a good match, then allow the student to decide which program best meets their needs. SREB is finding that students do not always make decisions based upon tuition or cost, but a variety of factors including which institutions will take their credit. These sets of tools at the front end of the process will enable students to make better decisions that will reduce the number of obstacles and facilitate positive outcomes for both students and institutions. Echoing others, Chaloux declared, "We need to be as responsive to the marketplace as we can be."

Dominique Abrioux noted the importance of focusing on the needs of the learner when discussing issues of regulatory frameworks. "We've always put the cart before the horse in that we haven't fully addressed 'what are the needs of the learners? What are the learners looking for?' Because until we know what the learners are looking for, how do we know what kind of regulatory framework we should be establishing?"

[17] OECD, "Education at a Glance," 2006, available online: http://www.oecd.org/document/52/0,2340,en_2649_34515_37328564_1_1_1_1,00.html.

# *Social Costs and Benefits: Cross-Border Education and the International Context*

Any conversation about e-learning is also about cross-border education, whether crossing borders within the United States, crossing international borders, or crossing borders between traditional and non-traditional higher education. Much of this discussion, led by Stamenka Uvalić-Trumbić, focused on the UNESCO perspective and addressed some of the vocabulary differences between U.S. and international communities. “Accreditation” is not commonly used and “e-learning” has multiple meanings. When discussing consumer protection, “learners”—not “consumers”—is the preferable term. In fact, the desire for regulation varies throughout the world. Whereas stakeholders in some countries—especially those in the first world—hold oppositional views towards regulation, regulation is seen as a desirable option in many countries in the developing world.

In recent decades, there have been unforeseeable global changes that have impacted higher education: the development of information and communication technologies (ICTs) and ICT-assisted higher education, the commercialization of higher education and subsequent rapid growth of educational markets, the debate around GATS (General Agreement on Trade in Services), and higher education becoming a critical commodity. There has been considerable concern about how governments and the academic community react to these changes and what will happen to core values of scholarship.

Moreover, a demographic shift in the developing world is expected. By the year 2025, there will be approximately seven to eight billion people in the world, half of whom are young. A pressing international concern is how to give the poor access to quality higher education, because access to higher education is directly correlated with development issues and poverty eradication. E-learning then becomes an obvious possible solution.

How can the issue of regulation in e-learning be adapted to these new demands? Three “As” were introduced: Is it accessible? Is it affordable? And is it appropriate? The questions most pressing for UNESCO and its constituents are:

- Accessibility. How can we widen access for the millions of people who do not have access to post-secondary higher education, and how can technology-enhanced education contribute to this?
- Inclusion of multiple stakeholders. Governments cannot do it alone, so it is essential to involve other stakeholders—parents, teachers, students, the private sector, etc. What is the role of government? What is the role of institutions like UNESCO in helping to develop regulatory solutions?
- Preservation of the central values of higher education—relevance, equity, internationalization, and quality—as a public good or public responsibility.

## REGULATORY RESPONSES TO CHANGE: QUALITY AND THE UNESCO/OECD GUIDELINES

While the goal of cross-border higher education is often to meet social, cultural, human, and economic needs, translating that into practice is the challenge. There is substantial difference between the needs and priorities of the developing world and the needs and priorities of the developed world. What is viewed as a regulatory scheme that may promote quality education in one context may have the exact opposite effect elsewhere. Further, what other countries may view as a way to improve access may be viewed as inimical to other concepts of how quality is assured.

Rationalizing the system across different uses may be daunting but necessary, and it is an increasingly significant issue for organizations like UNESCO.[18]

The UNESCO/OECD Guidelines on Quality Provision in Cross-border Higher Education[19] were developed with the consensus of a multi-stakeholder group, including government representatives from 91 member nations, quality assurance agencies, students, institutions, professional bodies, and recognition bodies. These guidelines are only a model for good practice and are not enforceable. Their conventions, which address the recognition of qualifications and degrees between different countries, are binding only to those countries who participate. In other words, while useful, the guidelines are only a very loose framework, an international soft law. The soft law approach is frequently used in the environmental arena to put pressure on countries that do not comply with basic guidelines, but such an approach depends on the number of countries who subscribe to the process and assumes that they have the necessary capacity to support the proposed framework.

> Without the majority of developing countries reflecting on this very generic framework and building either their own national or a regional quality assurance mechanism then, of course, the market machinations of American, U.K., Australian, German entities, to some extent, will dominate in those countries. It's as simple as that.

From a regulatory standpoint the guidelines serve a number of very persuasive functions. They will be used in national or regional settings and will have the potential to provide some convergence among adopters about expectations and quality. For example, in some developing countries such as Nigeria and Mauritius, the guidelines are already inspiring national regulation related to cross-border higher education. Though an international approach to quality might be reinforced, the nation-state will retain precedence.[20] This becomes a very powerful tool because, rather than implementing another country's practices wholesale, they can use the guidelines to examine their own needs in context.

UNESCO is also trying to promote access to transparent information, existing models, existing training, and so forth. The concern, however, is that by the time solutions or new guidelines are created, it will be too late. Kurt Larsen further suggested that thorough implementation and a strong involvement by institutions like the World Bank, in concert with major regional investments, will be essential for the necessary capacity-building and the ultimate success of the guidelines. Considerable enthusiasm was expressed for a research agenda that specifically tracks patterns of the adoption of the guidelines in different national contexts over the next decade.

## WESTERN QUALITY MEASURES AS THE INTERNATIONAL STANDARD?

When global institutions secure American accreditation, as one participant questioned, "To what extent is that distorting the market and undercutting the effort of the UNESCO/OECD guidelines to build domestic capability?"

[18] Uvalić-Trumbić emphasized, however, that UNESCO is not a regulatory body; they only advise governments. In so doing, they often aspire to inspire the development of regulation at the national level.
[19] OECD, "Guidelines for Quality Provision in Cross-border Higher Education," 2006. Available at: http://www.oecd.org/dataoecd/27/51/35779480.pdf.
[20] The Association of Commonwealth Universities helps governments, institutions, and other regulatory bodies understand what questions they should be asking as they develop their own guidelines and regulations.

Much of the material produced in the northern hemisphere may not be appropriate for use in the rest of the world. There has been a tendency for countries without quality control mechanisms to rely upon those developed by the institutional provider's originating country. Often the frame of reference for such accreditation has little relevance in a local context. Ralph Wolff noted:

> There is a big difference between a U.S. provider projecting into a country, and a provider operating out of a country…When we look at a program that's primarily designed for an international community, we have to struggle with, "Should it be an American degree, using American values? How much local contextualization should there be?" And we don't have that answer.

There was considerable discussion about the role of Western prominence in defining quality. Some felt that Western dominance should be resisted, although one participant raised the possibility that Western dominance of quality assurance can have a positive overall effect, and cited healthcare as an example, where developed country standards have raised the bar for global healthcare. We should avoid any knee-jerk reaction that non-Western standards must be different to be valid in a local context. But, as another participant pointed out: "We need to be mindful that other places do this thing called 'higher education' in some very different ways, and we need to be respectful of it and help people develop."

Paula Peinovich described Laureate, which acquires (physical) independent universities in-country and works with them in their own language and culture to respond to their local, regional, and national needs. They do not try to export U.S. education into those settings. Rather, Laureate assists them in expanding their mission to meet the local needs of the country. In terms of access, students value international experience, but they often want degrees from their home country.

Finally, it was noted that if we look at the broader spectrum and at the broader context, and ask whether providers are entering the market from a capacity-building access standpoint or whether they are coming in from a profit motive, then recommendations can be made about whether regulation should be facilitative or whether, in fact, it should be more critical.

## RECOGNITION OF DEGREES AND CREDIT TRANSFER

Often students cannot be sure that taking a degree abroad would actually be recognized in his or her home country. Recognition of degrees and credit transfer is not so problematic for leading countries, where the university degree is taken in the United States, the United Kingdom, or Germany. But how likely is it that a degree from India or China will be recognized in the United States or the U.K.? Such phenomena are a very indirect kind of regulation.

Credit transfer is a special concern, especially when considering "swirlers," those students who may go from institution to institution seeking specific courses. In some countries, like Canada, credit accumulation is difficult even across provinces. And while theoretically, in the U.S., students should be able to take credit from multiple institutions through consortial agreements, or, in some cases, transfer it from community colleges to four-year institutions, this is not always a transparent or easy process.

In reference to transnational recognition of degrees, Marty Michaelson provided an example of quality enhancement and efficiency enhancement intersecting over time:

> An example would be the skepticism of U.S. state regulators to recognize overseas medical degrees. As need developed for graduates of foreign medical schools, the market forced an examination of quality and the barrier to entry was relieved. And so over time, it worked out,

> not in a highly efficient way, but it did work out in a way that took quality into account. One of the concerns that many in higher education have about applying the sort of GATT model, if you will, to transnational regulation of education generally—let alone e-learning—is that it fails to account for quality. Why wouldn't we recognize a degree from an Indian college? There are two reasons we don't: one is xenophobia; the other reason is that we're helpless to evaluate the quality of an Indian college degree. But if there were pressure in the marketplace to accept graduates of colleges in India, we would be forced, as we did in the case of medical graduates, to appraise the quality of an Indian degree. And so, over time, the market does work its will on transnational regulation of higher education.

## VIRTUAL VS. SITE-BASED CROSS BORDER EDUCATION

Richard Garrett has found that although there are quite a few examples of regulation normalizing or ignoring e-learning, or enabling e-learning in all kinds of ways—funding, special structures, emphasis—regulation overall is neither a strong driver nor a strong inhibitor of e-learning. The only area, perhaps, where that is not the case is in telecommunications regulation in certain countries. He also noted that his past research suggests that the vast majority of cross-border education is about physical location. There is not much of an online presence given that, in many cases, there is not sufficient infrastructure to support e-learning. There have been numerous high-profile dot-com-related attempts—African Virtual University, Pakistan Virtual University—but many of them have not been very successful because they were unable to become economically sustainable.

For many developing countries, "mega universities" appear to be the most viable distance learning institutions. Many of these are vast institutions (pre-e-learning in the contemporary sense) that, in some cases, have hundreds of thousands of enrollments due to widened access within the past generation. Garrett suggested that perhaps there is some value in comparing the pre-e-learning distance education models given the recent timing of newer systems:

> Is it simply too early in the development of these new virtual equivalents [of distance learning] for us to judge them? And they've only been around five years, in some cases, less. Or should we be looking to these previous generation distance institutions to transform themselves because they've got the scale, the brand, the publicity, and the infrastructure? And is that where we're going to see things happening? Or is e-learning for the foreseeable future going to play a very minor part, because we are looking at the wrong area? It seems to me the commercial interest [in] cross-border [education] is physical-based in some sense, students meeting face-to-face, because it's more accessible than e-learning in most cases and therefore, more commercially viable...E-learning will gradually become more accessible and that's about telecommunications regulation, in part, and it's also about socioeconomic status and supply and demand issues. The focus, arguably, should be on enabling the existing distance education structure and the new equivalents to operate as efficiently as possible by perhaps employing some creative combinations of incentives plus regulation, and using OECD/UNESCO guidelines as a kind of quasi-global benchmark.

Sally Johnstone and Kurt Larsen guided this discussion using their white paper, *Consumer Protection in Cross-Border E-learning Delivery*, [21] as the point of departure. How can consumers of e-learning be protected as the higher education landscape changes, including protecting them from nefarious operators? It was agreed that some categorical standards may be in order so that students will be able to compare some set of qualitative features among institutions—ease of access, type of access, style of pedagogy, etc.—though whether or not such mandates could be a condition of quality assurance or authority to operate is unclear.

## HOW IS QUALITY DEFINED? CREATING A CONSENSUS ON TRANSPARENCY AND QUALITY

Among stakeholders on the U.S. scene, there is simply no consensus about what quality is and how to measure it, and there is certainly no consensus around having an international regulatory body. Organizations such as the Council for Higher Education Accreditation (CHEA) have published online guides to help consumers identify degree and accreditation mills. They, along with the Department of Education, have provided lists of institutions accredited by regional accreditors and lists defining degree mills, but there are still problems. From the federal perspective, Kay Gilcher described that, in the current regulatory framework for accreditors, the Department of Education requires accreditors to be engaged in two ways. First, there is a rule that says 'if an institution changes the modality of program delivery, it triggers the substantive change process.' This entails a review by the accrediting agency. Second, an accrediting agency must seek recognition by the Secretary of Education for the evaluation and accreditation of distance education offered by institutions it accredits. When applying for this recognition, the accrediting agency must document and demonstrate that it has reviewed distance education programs.[22]

At the international level, regulatory disciplines have not been developed and, as a result, there has not been any kind of international consensus. As discussed previously, there is some headway being made via the UNESCO/OECD guidelines. Trade agreements such as GATS can help facilitate cross-border education by eliminating unnecessary obstacles, although such international agreements are frequently controversial and will often in practice not override national sovereignty.[23] In general, there are often different secondary admission standards in different parts of the world, making it difficult to have a meaningful conversation about degree levels. An example of this challenge is the concern about European attempts to adopt a three-year baccalaureate. Such an effort might facilitate better comparison within European countries, where student transfer rates are extremely high; however, this raises issues about degree recognition and complicates the ability to compare standards between Europe and other nations. Given the challenges already in place, the e-learning environment may only exacerbate these disconnects.

One of the largest hurdles is that there is no standardization of information available from one institution to the next, and there is no place within the regulatory community that demands that information be public.

[21] Available online: http://cshe.berkeley.edu/research/regulation/reading.htm.
[22] CHEA offers numerous publications that address the accreditation of online learning and distance education at their website: http://www.chea.org. They generously provided many of those and other publications for posting directly on our project website: http://cshe.berkeley.edu/research/regulation/reading.htm.
[23] See, for example, the American Council on Education's overview of GATS, available online: http://www.acenet.edu/AM/Template.cfm?Section=Search&template=/CM/HTMLDisplay.cfm&ContentID=10453.

> Should those of us who are thinking about regulatory activities require total transparency on the part of institutions and give institutions guidelines as to what students need to know, so that they can make a good decision as to whether or not this is going to be a meaningful and useful experience for them?

Four overarching components of e-learning that could help consumers compare programs were presented: (1) content – is the program what I want and need?; (2) convenience – can I get it easily?; (3) quality – will it be of value to me?; and (4) price – can I afford it? All of these, except quality, are already fairly transparent and available to consumers. Quality has to be "the concentrated differentiating factor in the for-profit world." But, of course, quality has a number of dimensions that are not very well-defined, and quality is often based only on the reputation of the institution offering the program.

Assuming consumer-focused resources were available, participants questioned how this information would be effectively distributed to consumers. It was noted that some institutions already provide this information. For example, Walden University, a for-profit institution, has a twelve-page brochure that describes how learners should choose an online university. It is in Walden's best interest to identify high-level criteria so that potential students could see how the institution fits into the e-learning and higher education landscape.

An additional complicating factor is the lack of understanding about how people currently educate themselves and make choices. It was suggested that consumer decision-making in general is not a rational process, and "prestige" often enters into the equation. Surveys in the U.S. indicate that students get as much information as possible from institutional websites. When desired information is not easily obtained, they often do not do further research. In the U.K., institutions must make their quality assurance reports transparent on their websites, and anecdotal evidence suggests that students are making great use of this information. The general consensus was that consumers behave in varying ways, but the relevant information should be available to the consumer whether or not it is used as intended.

## THE IMPORTANCE OF GOOD DATA: WHERE TO GET THEM AND HOW THEY ARE SHARED

The lack of robust, transparent data in e-learning and higher education in general is a major hurdle to solving regulatory questions. When "you don't know what 'it' looks like and what the quantum is, it is virtually impossible to regulate in any meaningful way." One problem is that many institutions simply do not collect certain data. Even descriptive information, such as IPEDS[24] data, is often so different that even generalized comparison among similar institutions is not possible. Imposed requirements to collect new forms of data might require not only great procedural shifts, but additional resources both on the part of institutions and among regulatory agencies.

Because acquiring data is so difficult, governments have regulations that require institutions to provide them. Sanctions for not providing required data are likely to spur institutional cooperation. It was pointed out by Svava Bjarnason, however, that even supposedly standardized data can be messy and difficult to collect. For example, institutions in the U.K. are underreporting HESA[25] data because they have found ways to "wiggle" through definitions in areas that they do not want to disclose.

[24] Integrated Postsecondary Education Data System, available online: http://nces.ed.gov/ipeds.
[25] Higher Education Statistics Agency, available online: http://www.hesa.ac.uk.

> How are we sharing our understanding? Benchmarking on an international basis and six commonwealth countries can't agree what a full-time equivalent looks like. How do we identify a common dataset that we could look at that would help us to regulate in a meaningful way, whether you are not-for-profit or for-profit?

Bruce Chaloux noted that SREB has spent a lot of time trying to get states to sign off on a common set of standards for collecting data, but it takes a long time and diligent efforts to "wear the states down." Institutions cannot report separately on students who are e-learning students as opposed to non-e-learning students because institutions do not necessarily distinguish students in that way.

## TRANSPARENCY IN DATA

Good and bad quality examples can be found in all forms of higher education, and this extends to all types of institutions: traditional and e-learning, for-profit and nonprofit. What, then, are the things that keep institutions from providing transparency? Currently, for-profit institutions are required by the Security and Exchange Commission to publish selected data. It was, however, suggested that, with the elimination of the Fifty Percent Rule in the U.S. and as competition intensifies, there may be a greater push for transparency in the future. Such a shift is likely to be led by online-only institutions because they are under pressure to explain their pedagogy and the effectiveness of the online mode when compared with face-to-face learning. Moreover, as more players enter the marketplace, these institutions may have more incentive to disclose information in order to differentiate themselves from the pack.

> [For-profits] are willing to publish outcomes. They're willing to publish information backing up their accreditation decisions. They're willing to demand lots of performance information from their institution. In part, they're required to by federal law, but, in part, they go significantly beyond that. So institutional performance, information about student achievement...I think they took a necessity and they turned it into a virtue.

One concern expressed repeatedly was about the misperceptions that exist among the public, regulators, and policymakers about higher education and change in general. For instance, size and growth are often equated with poor quality performance, regardless of fact. Similarly, "difference" is often perceived as negative.

> Does a public perception of e-learning as somehow 'different' than traditional [education] demand a different regulatory scheme? If you look at the debates in the U.S. Congress, there is a perception that there is something different, which therefore requires a different regulatory scheme.

## COMPETENCY-BASED/OUTCOMES-BASED CREDENTIALING

Participants noted that competency-based credentialing is now a clear possibility in the U.S. in light of recent legislative changes made by Congress that will allow students of institutions that award competency-based degrees access to federal student aid. Excelsior and similar programs such as WGU have developed a means to measure competencies that appear to be valid. National tests exist in the U.S., but they are also being vigorously debated.[26] Adding fuel to the debate, a recent U.S. Commission on the Future of Higher Education has made proposals to create a mechanism

[26] Doug Lederman, "No College Left Behind?" *Inside Higher Ed*, 15 February 2006, available online: http://www.insidehighered.com/news/2006/02/15/testing.

that would enable the federal government to track individual students' academic, enrollment, and financial-aid information.[27]

Another participant suggested investigating how we can facilitate the shift toward a focus on outcomes rather than inputs. While the appeal of a regulatory examination works in professional fields, that standard may be more difficult to apply to traditional liberal arts education when there is no commonly accepted definition of what liberal arts education is or the purpose it serves. Thus, it is unlikely that either a test could be devised or implemented given the likely opposition to such a change. More realistically, another participant suggested developing some criteria that address these questions:

> What regulations that could be made or changed—within the next 10 years, as an example—would positively impact students' ability to match their learning needs with the providers? What are the impediments to students choosing their preferred learning means that can be changed, realistically?

It is important to acknowledge that e-learning faces even more regulatory challenges when it comes to the licensed professions. Law was used as an example, in which graduates from online programs cannot practice (except in California), and no more than a handful of credits can be offered by distance education. Judith Eaton noted that:

> The march of the professional bodies—in terms of regulating what's going on, regardless of what's happening at an institutional level or a national level—is one that we shouldn't lose sight of because they're going to have a lot of power about who is recognized and licensed to do what.

[27] "A National Dialogue: The Secretary of Education's Commission on the Future of Higher Education," available online: http://www.ed.gov/about/bdscomm/list/hiedfuture/about.html; Inside Higher Education's coverage of the Commission, online: http://insidehighered.com/news/focus/commission.

# *Summary of Conclusions*

- The idea of separate regulatory regimes for nonprofit (or not-for-profit) and for-profit institutions should be questioned. In most discourse, the distinction between these entities is unclear, despite commonly held assumptions. The qualitative distinctions between e-learning and traditional learning are similarly unclear and conflicted.

- E-learning challenges many of the core values of traditional education, which necessitates developing an enhanced understanding among regulators and accreditors about the differences between e-learning and traditional learning in various types of institutions and in relation to diverse student bodies.

- An examination is needed of if and how disaggregation and outsourcing of services in higher education can or should be regulated. Distance learning, especially e-learning, enables significant changes in the way institutions operate and how they diversify functions.

- Better coordination and communication among regulatory bodies is needed. There are too many regulatory bodies with overlapping and often competing jurisdictions and motives. Regulatory jurisdiction has become exceptionally complicated as a result because the jurisdiction for regulating e-learning may be the location of either the student or the institution. Hybrid learning environments complicate the regulatory regime.

- Clarity should be sought to better understand the distinctions between regulations that assure quality versus regulations that create barriers to students such as access to institutions, telecommunications infrastructures, and knowledge.

- An important goal is the development of a transparent set of standards to measure education quality, regardless of the location of learning (e.g., e-learning vs. traditional classroom) or institutional type. Arriving at a consensus about what those standards should be is a daunting prospect.

- Comparative and robust data ought to be collected and shared so that institutional operations and student performance are clear and transparent to both regulatory bodies and consumers/students globally.

- Methods need to be established for educating and informing regulatory bodies. For example, the regional accrediting community in the U.S. does not yet fully understand the fundamental differences between public financing and private financing.

- Learner needs should be addressed. Until we know what learners are seeking, efforts to address issues related to establishing a regulatory framework may not be meaningful or easily accomplished.

# *Recommendations for Future Research*

The following represents a sample of the recommendations that emerged from our discussions.

**External quality assurance (including academic standards and access to degree-awarding powers/university title).** In the U.S., a study might be made of the activities of state licensing boards and regional or other accrediting agency substantive change committees to determine the extent to which e-learning is now normalized in quality assurance terms. We should review changes over time that facilitated leading start-up e-learning institutions such as Capella University, Open University Catalonia, and Interactive University. Or, we could examine e-learning development relative to prevailing regulation at an on-campus institution. Outside the U.S. and U.K., research is needed to better determine the extent to which third-party quality assurance (whether in terms of inputs, process, or outcomes) inhibits and/or boosts e-learning in higher education. It might also be valuable to determine whether the ABA is increasingly isolated in its stance, or whether many other professional associations hold a similar line. Other issues to be addressed include whether or not quality is relative, e.g., sufficiency dependent on what needs to be accomplished (pilot training vs. teacher education) and whether the process is open to interpretation by a group of people. Accreditation practices should be reviewed in light of uneven standards in application (e.g., different accreditors will result in different results). Though quality is the end point, it is essentially a "pornography" standard (i.e., "I know it when I see it").

**Regulatory jurisdiction.** In the U.S., clarification is needed regarding what triggers the regulatory regime (e.g., enrollment only, other factors?), who the key stakeholders and decision-makers are in that process and the degree of power they hold (e.g., what gives the NY Board of Regents the authority to restrict new institutions?, etc.), and how notions of public/private impinge on regulatory regimes. Jurisdiction is often advanced on the basis of quality and protection but, in practice, this is not always the case. Studies are needed to better understand how cooperation can be fostered among regulatory bodies and resultant institutions. For example, the Sloan-C project could be analyzed to determine potential efficiencies for sharing student information and facilitating credit transfer. Additional studies could focus on creating common standards, both domestically and abroad. For instance, research on the potential effects of the UNESCO/OECD guidelines could be useful in understanding how minimal standards are created, accepted, and applied in practice in a variety of national contexts.

**Funding shifts and capital flows.** Research is needed to better understand how regulatory environments affect funding shifts and capital flows. ***Public & Private Funding.*** There is an emerging literature on best practices in public funding for e-learning in higher education, at least in the U.K./U.S./Canada. It might be instructive to examine the extent to which, in particular contexts, public funding over-stimulated the e-learning supply-side, anticipating structural change that other factors hindered. In terms of stimulating change, has institutional funding (e.g., purchase of CMS) in fact proven more influential than public funding? Is there any evidence that, in countries lacking a tradition of for-profit higher education, 100% e-learning has been relatively slow to take-off? In the U.S., studies could follow the effects of the abolition of the Fifty Percent Rule to gauge any shifts or emerging trends in public and private funding. A better understanding of existing and new tax incentives would also be useful. ***Financial Aid.*** Examine higher education financial aid/public funding rules outside the U.S. to determine any positive or negative impact on e-learning. Consider whether introduction of direct tuition (in countries with a history of comprehensive public subsidy) might hasten adoption of e-learning as a potentially low-cost alternative. Within the U.S., determine if increased access to student financial aid (through the abolition of the Fifty Percent Rule) changes student enrollment patterns in e-learning programs.

**Telecommunications.** Research is needed on the impact of deregulation/private investment in particular countries in relation to e-learning in higher education. We could examine the extent to which enhanced telecommunications infrastructure is accompanied by deregulated higher education systems (e.g., allowing for-profit providers to take advantage of new technology to reach new students) and whether there are any tensions between enhanced ICT and higher education culture and/or user preferences. Emerging policy debates in the U.S. around "network neutrality" provide an immediate opportunity for research focused on how variable fees for access to the Internet might ultimately affect the affordability and accessibility of education delivered online.

**Cross-border e-learning (import & export).** The issues particular to the international educational environment must be identified. One option would be to study a sample of leading cross-border online providers to gauge market penetration, delivery models, and quality assurance. Another option would be to review past and current attempts at genuine international accreditation.

**Diversity and competition.** Studies that examine how regulation promotes or inhibits e-learning are necessary. Specifically, research could identify totally new higher education configurations and complexities, and reveal how the traditional definition of "prestige" influences public perceptions of quality in the 21st century. The existing regulatory framework starts with the premise that "different equals not as good," so identifying and documenting best practices of innovation might elicit an improved understanding of how regulation and innovation can be balanced, and how wholly new and better configurations can be supported. Similarly, studies might look at circumstances of competition to determine if and how competition is a positive influence on higher education provision and access.

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